84-383

No.

Office - Supreme Court, U.S
FILED
SEP 8 1984
ALEXANDER L. STEVAS,
CLERK

In The Supreme Court of the United States

October Term, 1984

EDDIE ARGITAKOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

J. JEFFREY WEISENFELD
Attorney for Petitioner
401 Broadway—Suite 306
New York, N.Y. 10013
(212) 925-8640

GOLDBERGER & DUBIN, P.C.
401 Broadway—Suite 306
New York, N.Y. 10013
(212) 431-9380
On the Petition

Dick Burley Printers, 203 Richmond Avenue ■ Staten Island, New York 10302
Tel.: (212) 447-5358 — (516) 222-2470 — (914) 682-0848

QUESTIONS PRESENTED

1. Whether the antagonistic defense of Steve Argitakos, father of petitioner, at trial required a severance of their cases?

2. Whether the antagonistic defense of Steve Argitakos presented at a joint trial, denied petitioner a fair trial?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Authorities ii

Opinion Below 1

Jurisdiction 1

Constitutional Provisions and Statutes Involved . 2

Statement of the Case 2

Procedural History 2

The Trial 3

The Government's Case 3

The Defendant's Case 5

Reasons for Granting the Writ:

The Writ Should Be Granted To Give Guidance To The Lower Courts In The Frequently Arising Matter Of Antagonistic Defenses By Co-Defendants At A Jury Trial 5

Conclusion 10

APPENDIX

Appendix A—Opinion Below 1a

Appendix B—Statutes & Constitutional Provisions Involved 16a

TABLE OF AUTHORITIES

Cases

United States v. Barrera, 486 F.2d 333, 339 (2d Cir. 1973) 6

United States v. Berkowitz, 662 F.2d 1127 (2d Cir. 1981) 6

United States v. Carpentier, 689 F.2d 21 (2d Cir. 1982) *cert. den.* 103 S.Ct. 735 (1983) 5,6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

No.

EDDIE ARGITAKOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit affirming the conviction of Eddie Argitakos is set forth in the appendix *infra*, at pp. 1a-15a.

JURISDICTION

The Judgment of the United States Court of Appeals for the Second Circuit, affirming petitioner Eddie Argitakos' conviction was entered on July 10, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Fifth Amendment to the United States Constitution and Rule 14 of the F.R.Cr.P.

STATEMENT OF THE CASE

Procedural History

Indictment SS 83 Cr. 68 was filed on September 21, 1983. Count One charged Christos Potamitis, Eddie Argitakos, Demetrious Papadakis, a/k/a "Jimmy Pappas", Nicholas Gregory, a/k/a "Nick", a/k/a "Nick the Greek", and Steve Argitakos with conspiring to commit offenses against the United States, including bank larceny, interstate transportation of stolen property, making false statements to a federal agency, obstruction of justice, obstruction of criminal investigations, perjury, subornation of perjury, and making false declarations before a federal grand jury, in violation of Title 18, United States Code, Section 371. In Counts Two, Three and Four, Potamitis, Eddie Argitakos, Papadakis and Gregory were jointly charged, respectively, with bank larceny (in violation of Title 18, United States Code, Section 2113(b)), interstate transportation of stolen property (in violation of Title 18, United States Code, Section 2314), and unauthorized transfer, acquisition and possession of United States Department of Agriculture food stamp coupons (in violation of Title 7, United States Code, Section 2024(b)). Count Five charged Steve Argitakos with being an accessory after the fact to the foregoing offenses committed by Potamitis, Eddie Argitakos, Papadakis and Gregory, in violation of Title 18,

United States Code, Section 3. Potamitis, the sole defendant named in the remainder of the counts, was charged in Counts Six and Seven with making false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the Federal Bureau of Investigation, in violation of Title 18, United States Code, Section 1001. Counts Eight and Nine charged Potamitis with having made false material declarations under oath before a federal grand jury, in violation of Title 18, United States Code, Section 1623. In Count Ten, Potamitis was charged with having corruptly endeavored to influence, obstruct and impede the due administration of justice, in violation of Title 18, United States Code, Section 1503.

Trial commenced on October 24, 1983, and was concluded on December 7, 1983, when the jury returned verdicts convicting Potamitis and Eddie Argitakos on all counts in which they were charged, convicting Steve Argitakos on Count Five (accessory after the fact) and acquitting him on Count One (conspiracy), and acquitting Papadakis of all charges against him.

On January 12, 1984, Eddie Argitakos was sentenced to 15 year term of imprisonment and fines totalling $35,000. On appeal, the United States Court of Appeals for the Second Circuit affirmed the conviction of petitioner in an opinion dated July 10, 1984.

The Trial

The government's case

Christos Potamitis—employed as a guard at the Sentry Armored Courier Corporation ("Sentry")—and

Eddie Argitakos were involved in an elaborate scheme to steal over $11 million in currency and valuables from Sentry by staging a fake "robbery" of Sentry on December 12, 1982 to explain the theft, in which misleading signs of a forced entry of Sentry's premises were fabricated and Potamitis, the guard on duty, was left behind, the victim of an apparent assault, repeatedly to make false claims of a "robbery" to the authorities while his co-conspirators concealed the vast sums stolen from Sentry.

Eddie Argitakos, in the six months preceding the Sentry theft, was alleged to have recruited the additional personnel needed to stage the robbery and the cover up of the actual theft, met on numerous occasions with his co-conspirators, Potamitis, Nicholas Gregory and others, to discuss and refine plans for the theft, joined in several surveillances conducted of the Sentry building, acquired the equipment and weapons needed to make the ruse convincing, and after the theft, directly and through others, sought to preserve the fruits of the theft by depositing the proceeds with trusted third parties and by obstructing the investigation.

Potamitis, in addition to supplying vital information concerning Sentry's operations during the planning stages, portrayed himself as the "victim" guard on duty the night of the theft, while he knowingly permitted the Sentry alarm system to remain disengaged during the "robbery", gave his co-conspirators free access to Sentry's premises, and after being found handcuffed to a railing, gave an intentionally vague and misleading account of the "robbery", which he repeated to the authorities and the Grnad Jury on several occasions in the weeks following the Sentry theft.

Steve Argitakos, Eddie's father, allegedly transported the proceeds of the theft to several trusted friends, including Steve Panagopoulos, who did not testify at trial after he testified before the Grand Jury about the deposited funds. In all, stolen Sentry funds were recovered from four locations and some of the currency from each location was identified as having come from the Sentry theft.

The defendant's case

The defense of petitioner at trial was that he did not know of nor commit the crimes charged.

The defense of petitioner's father, Steve Argitakos, was that he was a "dupe" or messenger boy for petitioner and was purposely excluded from the conspiracy and conspiratorial meetings by petitioner. A timely motion for a severance based upon antagonistic defenses was denied.

REASONS FOR GRANTING THE WRIT

THE WRIT SHOULD BE GRANTED TO GIVE GUIDANCE TO THE LOWER COURTS IN THE FREQUENTLY ARISING MATTER OF ANTAGONISTIC DEFENSES BY CO-DEFENDANTS AT A JOINT TRIAL.

This petition raises the issue of when antagonistic defenses between co-defendants at a joint trial required a severance. This Court has denied certiorari on a similar issue in *United States v. Carpentier,* 689 F.2d 21 (2d Cir. 1982) *cert. den.* 103 S.Ct. 735 (1983). Despite this previous denial of certiorari, the issue of antagonistic defenses is a frequently recurring one,

and the generalized and vague manner in which the Court of Appeals have handled the issue is totally inadequate and guidance from the Supreme Court is required.

Before turning to the facts of this particular case, certain basic principals must be set forth. First, evidence of equal evidentiary value coming from the prosecution and a co-defendant do not have an equal impact on a jury. Since co-defendants are not perceived as adversaries, their concessions or evidence carries more weight and is more difficult to rebut.

Second, the antagonistic defense can be raised by evidence (on direct or cross) or by argument of counsel E.g. *United States v. Barrera,* 486 F.2d 333, 339 (2d Cir. 1973); *United States v. Berkowitz,* 662 F.2d 1127 (5th Cir. 1981).

The Circuits which have considered the issue have held that a showing of some antagonism and prejudice is insufficient to requiring a severance and that mutual exclusivity of defense is required. Ultimately, the issue is whether the accused received a fair trial. *United States v. Berkowitz, supra,* at 1134.

Underlying the law on the grant of a severance and the rational support for it is that some prejudice to a defendant from a joint trial is "acceptable given the judicial economies that result from joinder" *United States v. Carpentier, supra* at 27.

Since the underlying rationale for permitting an accused to be prejudiced by a joint trial is judicial economy, some analysis of the actual economy is required and economy should not be presumed, nor

should only a very slight economy weigh as heavily in the balance as a great one.

In this case, the antagonism of the defense of Eddie Argitakos with that of Steve Argitakos was very great. Indeed, it was mutually exclusive since the argument of counsel for Steve Argitakos argued that obviously Eddie Argitakos was guilty and that because of this guilt, Eddie did everything he could to keep Steve from participating in or obtaining knowledge of the crime. Aside from the cross-examination of Gabriel Iakovides by counsel for Steve Argitakos which highlighted Eddie's role (T3845-7),* Steve Argitakos' attorney in his summation clearly, with some reluctance since this was a father and son, conceded critical contested issues. Eddie Argitakos' defense was that he did not commit the crime. In light of that defense, the following comments on summation for Steve Argitakos were devastating to Eddie's defense, especially since the comments came during his father's defense.

> His own argument gives us another reasonable doubt to find Steve Argitakos not guilty for on two occasions I will demonstrate to you by reference to the facts, applying the logic of the government, Steve is excluded from any conspiratorial conduct.
>
> First off, and not in the order of importance, you have Mr. Skiadas who comes down and goes into Sparta and apparently sees Steve there and they do exchange pleasantries. "Hello, how are you?"
>
> The next thing you know he (Skiadas) is taken out of the premises by his son Eddie and there is a conversation.

---

*References to the trial transcript are designated "T".

Isn't it significant that there was no conversation subsequent to December 12, 1982, between Skiadas and Eddie in the presence of Steve?

Apply the government's argument. He was excluded in the most devastating example.

Legakis, when he comes, the parents were there, Steve and his wife, and a note is passed and a discussion is had, not in the office in the presence of his parents, but I believe, if I'm correct in my recollection, in the bathroom, privately, clandestinely, between people the government claims trusted each other, but one thing I will tell you, it was done deliberately and willfully to exclude Steve Argitakos. He was not given the note to read. He was not taken into the men's room. He was not taken into anybody's confidence in this case and by the reasoning of the prosecution, there is a definitive reason why *he* was not taken into confidence by anybody because *he* was not involved, and they have not proved it in any manner or form.

* * *

I suggest to you that if Steve suspected the involvement of anybody in this trial that's not enough.

* * *

Talk about a reasonable doubt, you have reason to say "We will not convict the father because he is the father. We will not convict on a relationship."

* * *

He was used.

* * *

What can I say about Iakovidis? Iakovidis told you it was Eddie who called him and said, "I will bring the trunks over."

If you don't think this is repugnant for me as a defense lawyer to tell you about the son of the father that I represent, you don't know what difficult tasks are. But the same way you are obligated to say not guilty, I have an obligation to present the facts as they are.

> Iakovidis said Eddie called and said he was going to bring the trunks over. Mrs. Iakovidis testified that she helped Eddie put the trunks in the garage.
>
> Then Iakovidis got a telephone call from Eddie, and he says, "I will pick them up, or I will send someone over to pick them up," and that's not criminal intent, no matter what you reason out. A messenger boy, the father. If you think he was a messenger boy, he shouldn't be convicted. (T5796, T5798-9, T5815-7, T5823, T5835, T5836)

By these comments, counsel for Steve Argitakos, agreed with the government and concluded that there was a conspiracy, that Eddie Argitakos was a part of it, that Eddie's guilt was shown by his conscious efforts to keep his father out of the conspiracy, that Steve suspected Eddie's guilt, and that Steve was an innocent messenger boy for his culpable son.

The flip assertion by the Second Circuit, which constitutes its entire analysis of the issue, was, ". . . we are not persuaded by the argument that severance was required because the defenses of Steve and Eddie Argitakos were antagonistic" Slip op. p. 5143.

The Second Circuit did not even attempt to analyze the impact of the comments which gave rise to the antagonism in defenses, just a conclusory paragraph instead of analysis. So too, no mention was made by the Second Circuit that the evidence against Steve Argitakos constituted only a tiny fraction of that offered at trial and that a separate trial for Steve would have lasted one or two days.* A triffling

*Steve Argitakos' defense did not contest any of the facts of the robbery, only his, Steve's, knowledge was at issue. Thus, a separate trial would not have required much proof.

judicial economy, certainly insufficient to overcome or outweigh the prejudice to Eddie from Steve's defense.

In conclusion, the lack of Supreme Court guidance in the area of antagonistic defenses as a basis for severance and as the denial of a fair trial has led to a rule of law which permits almost any antagonistic defense at a joint trial and which does not require any evaluation of the judicial economy actually involved. This case presents a prime example of a seriously antagonistic defense, causing great prejudice, where little saving of judicial time and effort was involved. Since the underlying reason for requiring joint trial is to save time and effort, any rule of law or analysis which does not evaluate the true "economy" is nonsense. This Court should grant certiorari to set forth clear and reasonable guidance for the lower courts.

CONCLUSION

FOR THE REASON STATED ABOVE, THE WRIT SHOULD BE GRANTED.

J. JEFFREY WEISENFELD
Attorney for Petitioner
401 Broadway—Suite 306
New York, N.Y. 10013
(212) 925-8640

GOLDBERGER & DUBIN, P.C.
401 Broadway—Suite 306
New York, N.Y. 10013
(212) 431-9380
(On the Petition)

Appendix A—Opinion Below

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 1284-86—August Term, 1983

(Argued June 6, 1984 Decided July 10, 1984)

Docket Nos. 84-1036-38

UNITED STATES OF AMERICA,

Appellee,

v.

CHRISTOS POTAMITIS, EDDIE ARGITAKOS, and STEVE ARGITAKOS,

Appellants.

Before:

OAKES and WINTER, *Circuit Judges*, and MISHLER, *District Judge*.*

Appeal from judgments of conviction entered in the United States District Court for the Southern District of

---

* Of the Eastern District of New York, sitting by designation.

BEST AVAILABLE COPY

New York, Edward Weinfeld, *Judge*, in connection with $11 million robbery of Sentry Armored Courier Corporation, Bronx, New York. Claims of variance, erroneous admission of grand jury testimony, prejudicial denials of severances, and improper venue, inter alia. Judgments affirmed.

DENNIS B. SCHLENKER, Albany, NY (Kathleen J. Pehl, John B. Sheehan, Albany, NY, of counsel), *for Appellant Potamitis*.

LAWRENCE A. DUBIN, New York, NY (Goldberger, Feldman & Dubin, New York, NY, of counsel), *for Appellant Eddie Argitakos*.

JOEL A. BRENNER, New York, NY (Goldberger, Feldman & Dubin, New York, NY, of counsel), *for Appellant Steve Argitakos*.

IRA H. BLOCK, Assistant United States Attorney (Rudolph A. Giuliani, United States Attorney for the Southern District of New York, Celia Goldwag Barenholtz, Benito Romano, Assistant United States Attorneys, of counsel), *for Appellee*.

OAKES, *Circuit Judge*:

Christos Potamitis, Eddie Argitakos, and Steve Argitakos appeal from judgments of conviction entered after a jury trial in the United States District Court for the Southern District of New York, Edward Weinfeld, Judge. Potamitis, Eddie Argitakos, and others were convicted of bank larceny, interstate transportation of stolen property, conspiracy, and other offenses. Steve Argitakos was acquitted of conspiracy, but convicted of being an accessory after the fact for transporting and concealing the proceeds of the theft. Potamitis was also convicted of making fraudulent statements to the FBI, perjury before the grand jury, and obstruction of justice. Another defendant, Demetrios Papadakis, was acquitted of all charges. We have considered the appellants' objections and affirm the judgments of the district court.

FACTS

The Government proved at trial that Christos Potamitis, Eddie Argitakos, and others planned and executed an elaborate robbery of the Sentry Armored Courier Corporation (Sentry) in Bronx, New York, where Potamitis was employed as a guard. More than $11 million in currency and valuables was stolen, only about $1 million of which has been recovered to date. The evidence showed that Potamitis and Eddie Argitakos "staged" a robbery at Sentry on the night of December 12, 1982, when Potamitis was the only guard on duty. The alarm, which Potamitis was responsible for activating, did not sound. On the morning of December 13, Sentry's assistant vice president found Potamitis handcuffed to the railing of a staircase, the apparent victim of the robbery.

Potamitis gave his account of the incident to New York City police officers and FBI agents. He stated that he had been surprised at his desk by two masked gunmen who took his gun, led him out of the office, and handcuffed him to the railing. He also testified before the grand jury on the matter, specifically asserting that he had properly set the alarm at the scheduled time on the evening of December 12, and was unaware that the system was not working properly. He denied any involvement in or prior knowledge of the theft. He stated that he had not let any unauthorized persons onto Sentry's premises, and knew neither the identity of the robbers nor the location of the missing money and valuables.

At trial, the testimony of George Legakis and Lenny Cascio related a series of conversations and meetings among Potamitis, Eddie Argitakos, Nicholas Gregory, and themselves, during which the robbery and concealment of its proceeds were planned. Two other key witnesses who had testified before the grand jury, Steve Panagopoulos and Gerrasimos Pavlatos, failed to appear at the trial to testify. After evidentiary hearings, the district court determined that Steve Argitakos, Eddie Argitakos's father, was responsible for their unavailability and admitted their grand jury testimony as evidence against him. Panagopoulos had testified before the grand jury that Steve Argitakos shortly after the robbery had asked him to store a locked footlocker in his garage in East Greenbush, New York. After Eddie Argitakos was arrested, Panagopoulos had the footlocker delivered to federal authorities, who discovered almost $400,000 of money taken during the robbery.

DISCUSSION

The appellants raise numerous objections to their convictions. Most importantly, they contend that (1) the Government's proof was insufficient to establish the conspiracy charged in the indictment; (2) the district court erred in admitting into evidence certain grand jury testimony; (3) the court erred in denying various motions for severance; (4) venue was improper with respect to Eddie Argitakos on the charge of being an accessory after the fact.

1. *Scope of the conspiracy charged and proved.* Eddie Argitakos and Potamitis argue that their convictions for conspiracy must be reversed because of an alleged variance between the indictment and the evidence adduced at trial. According to the appellants, the indictment charged a single conspiracy, while the evidence purportedly established separate conspiracies: one to commit the robbery which supposedly ended when the robbers left Sentry's premises with the money, a second to deal with the proceeds which presumably began sometime after the robbery was accomplished. Because of the alleged variance between the indictment and proof, appellants argue that their convictions must be reversed, relying on *Grunewald v. United States*, 353 U.S. 391, 405 (1957), *Lutwak v. United States*, 344 U.S. 604 (1953), and *Krulewitch v. United States*, 336 U.S. 440 (1949).

The question whether the proof establishes a single or multiple conspiracies is an issue of fact "singularly well-suited to resolution by the jury." *United States v. McGrath*, 613 F.2d 361, 367 (2d Cir. 1979), *cert. denied*, 446 U.S. 967 (1980). Implicit in the jury's verdict here is the finding that the Government proved a single conspiracy. Construing the evidence in the light most favorable to the

Government, *United States v. Murray*, 618 F.2d 892, 902 (2d Cir. 1980), the evidence was clearly sufficient as a matter of law to support the finding of a single conspiracy.

The cases on which the appellants rely involve far different circumstances from those involved here. In *Grunewald*, 353 U.S. 391, for example, the court determined that the main objective of the conspiracy was to obtain "no prosecution" rulings from the IRS as part of a tax fraud scheme. Since no agreement to conceal the conspiracy after its accomplishment was shown or could be inferred from the record, the court held that the duration of the conspiracy could not be lengthened indefinitely to keep the statute of limitations from expiring. The court went on to make a "vital" distinction between "acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." *Id.* at 405 (emphasis in original). We believe that this case is a clear example of the former.

The evidence established a single conspiracy involving the robbery itself, obstruction of the investigation, and various acts of concealment. For example, it was essential to the plan that Potamitis remain behind to play the "victim," to conceal his involvement in the crime and the identity of his co-conspirators. Potamitis's ruse enabled the others to flee and gave them time to secrete the proceeds. Clearly, the evidence was sufficient to support the jury's finding that Potamitis's actions subsequent to the theft were part of the original conspiracy to rob Sentry. The nature of the crime involved in this case shows that "the successful accomplishment of the crime necessitate[d] concealment." *Grunewald*, 353 U.S. at 405.

See United States v. Colasurdo, 453 F.2d 585, 592 (2d Cir. 1971), *cert. denied*, 406 U.S. 917 (1972).

Likewise, the jury could fairly have concluded that the division and concealment of the proceeds were parts of the single conspiracy. As this court has said, "where a general objective of the conspirators is money, the conspiracy does not end, of necessity, before the spoils are divided among the miscreants." *United States v. Knuckles*, 581 F.2d 305, 313 (2d Cir.), *cert. denied*, 439 U.S. 986 (1978). *Accord*, *United States v. Mennuti*, 679 F.2d 1032, 1035 (2d Cir. 1982). Thus, consistent with *Grunewald*, the jury could infer from the evidence that acts to conceal and divide the proceeds were part and parcel of a single scheme to rob Sentry.

2. *Admission of grand jury testimony.* After conducting evidentiary hearings pursuant to *United States v. Mastrangelo*, 693 F.2d 269, 273 (2d Cir. 1982), *cert. denied*, 52 U.S.L.W. 3841 (U.S. May 21, 1984), Judge Weinfeld declared Steve Panagopoulos and Gerrasimos Pavlatos to be unavailable witnesses. Stating that he had no doubt that Steve Argitakos was responsible for the witnesses' disappearance, Judge Weinfeld ruled that their grand jury testimony was admissible against him. Steve Argitakos argues here that the district court was clearly erroneous in finding that he was responsible for the witnesses' unavailability and that he was denied a fair trial as a result of the admission of the grand jury testimony. Relying primarily on *Bruton v. United States*, 391 U.S. 123 (1968), Eddie Argitakos and Potamitis claim that despite the trial court's limiting instructions, admission of the testimony resulted in unfair prejudice to them.

A defendant may waive the right to confront witnesses against him when his own misconduct is responsible for a

witness's unavailability at trial. *Mastrangelo*, 693 F.2d at 272-73 (citing numerous cases). The testimony at the evidentiary hearings before the district court provided ample support for the conclusion that Steve Argitakos's threats kept Panagopoulos and Pavlatos from appearing at trial. Moreover, Judge Weinfeld's finding was based largely on his evaluation of the credibility of this testimony. Thus, on this record, there is no basis on which we can hold, as appellants would have us do, that the court's ruling was clearly erroneous. Since the record fully supports the finding that Steve Argitakos was responsible for the witnesses' unavailability, his confrontation clause objections to the admission of the grand jury testimony carry no weight.

The claim that the Government is at fault for not securing the presence of the two witnesses is also meritless. To satisfy the "basic litmus of Sixth Amendment unavailability," and thus to fall within the exception to the confrontation clause, the prosecution must make a "good faith effort" to obtain the presence of witnesses at trial. *Ohio v. Roberts*, 448 U.S. 56, 74 (1980). Judge Weinfeld found that such efforts were made here. In the case of Panagopoulos, who had fled to Greece before a trial date was set, the prosecutors enlisted the aid of the United States embassy to attempt to locate him. Embassy representatives met with Panagopoulos's brothers and left copies of both the grand jury and trial subpoenas with them. They also hired professional process servers licensed in Greece, and the record details their thorough efforts to locate the witness. We are satisfied, then, that the Government fulfilled its obligation to make a good faith effort to secure Panagopoulos's presence at trial.

We also believe that the Government's efforts to obtain Pavlatos's appearance were adequate. When Pavlatos

first failed to appear, a material witness warrant was secured. FBI Agent Coleman rather quickly located Pavlatos in Montreal, and Pavlatos told Coleman about a number of threats made against him and his family. Because the warrant was not effective in Canada, Coleman could not arrest Pavlatos. Instead, he managed to induce him to return voluntarily to New York, with the promise that he would not be arrested once in the United States. Agents kept in close touch with Pavlatos upon his return. As late as the Saturday evening preceding his scheduled Monday appearance, he told them that he would testify. Later that evening, however, Pavlatos again disappeared. On this record, we agree with Judge Weinfeld that the Government acted reasonably and in good faith in attempting to secure Pavlatos's testimony.

Finally, we are unpersuaded by the argument raised by Eddie Argitakos and Potamitis that admission of the grand jury testimony of Panagopoulos and Pavlatos against Steve Argitakos resulted in prejudicial spillover, thereby denying them a fair trial. Appellants' assertions notwithstanding, *Bruton v. United States*, 391 U.S. 123 (1968), is simply inapposite to this case. In *Bruton*, the Supreme Court held that the introduction of a statement by a nontestifying defendant which inculpates a co-defendant may violate the co-defendant's Sixth Amendment confrontation rights. Here, the grand jury testimony simply did not inculpate either Eddie Argitakos or Potamitis. Potamitis was not even mentioned in the statements; Eddie Argitakos is mentioned in three brief passages in which Pavlatos acknowledged that he knew Eddie, that Eddie was Steve's son, and that Eddie had gone to Greece on his honeymoon. None of these statements tended to incriminate Eddie in any way. In light of the trial court's limiting instructions, we do not believe

that this admission of the testimony against Steve Argitakos prejudiced his co-defendants.

3. *Motions for severance.* Each of the defendants claims that the district court abused its discretion in denying various motions for severance. Eddie and Steve Argitakos argue first that the denial of their motions to sever resulted in prejudicial spillover from evidence admissible only against their co-defendants. They claim further that their defenses at the joint trial were irreconcilably antagonistic and thus that they should not have been tried together. Potamitis contends that he was prejudiced by the district court's refusal to sever the counts charging him with making false statements to FBI agents, committing perjury before the grand jury, and obstruction of justice.

The disposition of a motion for severance falls within the discretion of the trial court. Fed. R. Crim. P. 14. The exercise of that discretion will be reversed only upon an appellant's showing of "substantial prejudice" as a result of the court's denial of a severance motion. *United States v. Cunningham*, 723 F.2d 217, 229-30 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3776 (U.S. Apr. 23, 1984); *United States v. Anzalone*, 626 F.2d 239, 247 (2d Cir. 1980). Substantial prejudice does not simply mean a better chance of acquittal, *United States v. Weisman*, 624 F.2d 1118, 1129-30 (2d Cir.), *cert. denied*, 449 U.S. 871 (1980); rather, the appellants must show that a "miscarriage of justice [has] occurred" as a result of the court's refusal to sever the trials. *United States v. Herrera*, 584 F.2d 1137, 1143 (2d Cir. 1978), quoting *Schaffer v. United States*, 221 F.2d 17 (5th Cir. 1955).

We are satisfied that Judge Weinfeld's limiting instructions to the jury were adequate to protect Eddie and Steve Argitakos from prejudicial spillover from evidence admis-

sible only against other co-defendants. Indeed, the appellants point to no flaws in the instructions themselves, or to instances in which the court failed to give such instructions. As this court has observed, "[i]t is sound doctrine, to be sure, that juries must be supposed usually to be able and determined to follow instructions." *United States v. Kaplan*, 510 F.2d 606, 611 (2d Cir. 1974). Given that the case is, as the district court characterized it, "relatively simple and concise," we find that the district court did not abuse its discretion in denying the motions to sever based on prejudicial spillover. *United States v. Potamitis*, 564 F. Supp. 1484, 1487 (S.D.N.Y. 1983).

Likewise, we are not persuaded by the argument that severance was required because the defenses of Steve and Eddie Argitakos were antagonistic. As we explained in *United States v. Carpentier*, 689 F.2d 21, 27-28 (2d Cir. 1982), *cert. denied*, 103 S. Ct. 735 (1983), "[a] simple showing of some antagonism between defendants' theories of defense does not require severance." Separate trials are required only upon a showing that "the jury, in order to believe the core of testimony offered on behalf of [one] defendant, must necessarily disbelieve the testimony offered on behalf of his co-defendant." 689 F.2d at 28, *quoting United States v. Berkowitz*, 662 F.2d 1127, 1134 (5th Cir. 1981).

Steve Argitakos argues that the joint trial with his son prevented him from testifying in his defense that he received the trunk from his son, Eddie, and delivered it to Panagopoulos. At no time, however, did counsel for Steve Argitakos offer any particularized showing of what his client's testimony would be or why such testimony could not be presented at a joint trial. The district court specifically pointed to this failure in denying Steve Argitakos's pretrial severance motion. *United States v. Po-*

tamitis, 564 F. Supp. at 1487. With respect to this claim, there is nothing now before us which details any further an antagonism of the nature and degree required to compel severance.

Eddie Argitakos's antagonism claim focuses exclusively on his disagreement with Steve Argitakos concerning who put the locked trunks with proceeds from the Sentry theft in the Panagopoulos garage and in another individual's basement. Even granting that the defendants disagreed completely on this point, it simply does not involve a fundamental antagonism regarding "the core" of one's defense. *Carpentier*, 689 F.2d at 28, quoting *Berkowitz*, 662 F.2d at 1134. Given the overwhelming evidence of Eddie Argitakos's involvement in the theft from the beginning, whatever unfavorable inferences the jury may have drawn from the efforts of counsel for Steve Argitakos to tie Eddie to the trunks, these cannot be said to have resulted in "substantial prejudice."

Finally, Potamitis argues that he suffered substantial prejudice by the district court's refusal to sever the counts charging him with false statements, perjury, and obstruction of justice. The law in this circuit clearly supports the joinder of underlying substantive crimes with perjury counts where, as here, the false declarations concern the substantive offenses. *United States v. Carson*, 464 F.2d 424, 436 (2d Cir.), *cert. denied*, 409 U.S. 949 (1972); *United States v. Sweig*, 441 F.2d 114, 118-19 (2d Cir.), *cert. denied*, 403 U.S. 932 (1971); *see generally United States v. Werner*, 620 F.2d 922, 928-29 (2d Cir. 1980). The contention that there is some inherent prejudice in joining perjury and related counts with substantive offense charges has been widely rejected. *See, e.g., United States v. Kim*, 595 F.2d 755, 770-71 (D.C. Cir. 1979); *United States v. Schilleci*, 545 F.2d 519, 522 (5th Cir. 1977).

Thus, Judge Weinfeld did not abuse his discretion in denying Potamitis's motion to sever these counts.

4. *Venue.* Steve Argitakos argues that his conviction must be set aside because there was insufficient credible evidence that he committed an act in the Southern District of New York. Argitakos was charged, inter alia, with being an accessory after the fact, 18 U.S.C. § 3 (1982); this was the only crime for which he was convicted. The acts which constituted this offense were moving and concealing more than $1 million of proceeds of the Sentry theft. These acts clearly show the offense to be a continuous one for purposes of the relevant venue statute, 18 U.S.C. § 3237(a) (1982), which provides that "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

To prove venue, the prosecution must show by a preponderance of the evidence that "any part of the crime was committed within the district." *United States v. Panebianco*, 543 F.2d 447, 455 (2d Cir. 1976), *cert. denied*, 429 U.S. 1103 (1977). Of course, venue may be proved by circumstantial evidence. *United States v. Gargiso*, 456 F.2d 584, 588 n.5 (2d Cir. 1972). Judge Weinfeld's charge actually put the prosecution to a higher standard of proof, stating that the jury must find beyond a reasonable doubt that Steve Argitakos "did receive, relieve, comfort or assist one or more of the other defendants by means of the acts charged in the indictment, and that at least some of his activities in this regard took place in the Southern District of New York."

Objections to venue are waived unless "specifically articulated" in defense counsel's motion for acquittal.

United States v. Grammatikos, 633 F.2d 1013, 1022 (2d Cir. 1980). A general motion for a judgment of acquittal, or a general motion for a directed verdict of acquittal at the close of the Government's case, is not sufficient to raise and preserve for appeal the question of venue. *United States v. Menendez*, 612 F.2d 51, 54-55 (2d Cir. 1979); *United States v. Boney*, 572 F.2d 397, 400-01 (2d Cir. 1978). The fact that defense counsel sought on cross-examination to show that one could travel from Queens to East Greenbush without passing through the Southern District, and the fact that counsel requested a venue instruction, is not enough to prevent waiver of the venue objection in this case. Counsel's actions merely show his intention to put the Government to its proof on the issue; they do not satisfy the "specific articulation" requirement of our cases.

Nevertheless, the Government put on sufficient evidence from which the jury could conclude that at least some of Steve Argitakos's activities as an accessory after the fact occurred in the Southern District. Joanna Panagopoulos testified that she spoke with Steve Argitakos the day that he delivered the trunk to her garage in East Greenbush, New York. She stated that Argitakos told her that he had left New York early that morning and planned to return to New York that night. He also asked her for directions to the New York State Thruway "to get back to New York," the route which, according to other testimony at trial, is the most direct route for automobile travel between East Greenbush and New York City and passes through the Southern District of New York. The jury could infer from this uncontradicted testimony that Argitakos concealed and transported the trunk through the Southern District as part of his activity as an accessory after the fact.

We have considered the appellants' other objections and find them to be without merit. Thus, we affirm the judgments of conviction.

Judgments affirmed.

Appendix B—Statutes & Constitutional Provisions Involved

U.S. Constitution, Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeoparty of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Criminal Procedure

Rule 14. Relief from Prejudicial Joinder

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.